



General Assembly

January Session, 2009

Raised Bill No. 805

LCO No. 2489

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Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

AN ACT CONCERNING WHISTLEBLOWER PROTECTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) There is established a
2 Retaliation Adjudication Board within the Commission on Human
3 Rights and Opportunities for administrative purposes only. Such
4 board shall consist of human rights referees appointed pursuant to
5 section 46a-57 of the general statutes and such other hearing officers as
6 designated by the Governor, as necessary. The board shall conduct
7 hearings regarding complaints of retaliation for filing whistleblower
8 complaints pursuant to section 4-61dd of the general statutes, as
9 amended by this act and issues such orders as authorized by law.

10 Sec. 2. Section 4-61dd of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective July 1, 2009*):

12 (a) Any person having knowledge of any matter involving
13 corruption, unethical practices, violation of state laws or regulations,
14 mismanagement, gross waste of funds, abuse of authority or danger to
15 the public safety occurring in any state department or agency or any
16 quasi-public agency, as defined in section 1-120, or any person having

17 knowledge of any matter involving corruption, violation of state or
18 federal laws or regulations, gross waste of funds, abuse of authority or
19 danger to the public safety occurring in any large state contract, may
20 transmit all facts and information in such person's possession
21 concerning such matter to the Auditors of Public Accounts. The
22 Auditors of Public Accounts shall review such matter and report their
23 findings and any recommendations to the Attorney General. Upon
24 receiving such a report, the Attorney General shall make such
25 investigation as the Attorney General deems proper regarding such
26 report and any other information that may be reasonably derived from
27 such report. Prior to conducting an investigation of any information
28 that may be reasonably derived from such report, the Attorney
29 General shall consult with the Auditors of Public Accounts concerning
30 the relationship of such additional information to the report that has
31 been issued pursuant to this subsection. Any such subsequent
32 investigation deemed appropriate by the Attorney General shall only
33 be conducted with the concurrence and assistance of the Auditors of
34 Public Accounts. At the request of the Attorney General or on their
35 own initiative, the auditors shall assist in the investigation. The
36 Attorney General shall have power to summon witnesses, require the
37 production of any necessary books, papers or other documents and
38 administer oaths to witnesses, where necessary, for the purpose of an
39 investigation pursuant to this section. Upon the conclusion of the
40 investigation, the Attorney General shall where necessary, report any
41 findings to the Governor, or in matters involving criminal activity, to
42 the Chief State's Attorney. In addition to the exempt records provision
43 of section 1-210, the Auditors of Public Accounts and the Attorney
44 General shall not, after receipt of any information from a person under
45 the provisions of this section, disclose the identity of such person
46 without such person's consent unless the Auditors of Public Accounts
47 or the Attorney General determines that such disclosure is
48 unavoidable, and may withhold records of such investigation, during
49 the pendency of the investigation.

50 (b) (1) No state officer or employee, as defined in section 4-141, no

51 quasi-public agency officer or employee, no officer or employee of a
52 large state contractor and no appointing authority shall take or
53 threaten to take any personnel action against any state or quasi-public
54 agency employee or any employee of a large state contractor in
55 retaliation for such employee's or contractor's disclosure of
56 information to (A) an employee of the Auditors of Public Accounts or
57 the Attorney General under the provisions of subsection (a) of this
58 section; (B) an employee of the state agency or quasi-public agency
59 where such state officer or employee is employed; (C) an employee of
60 a state agency pursuant to a mandated reporter statute; or (D) in the
61 case of a large state contractor, an employee of the large state
62 contractor or the contracting state agency concerning information
63 involving the large state contract.

64 (2) If a state or quasi-public agency employee or an employee of a
65 large state contractor alleges that a personnel action has been
66 threatened or taken in violation of subdivision (1) of this subsection,
67 the employee may notify the Attorney General or Auditors of Public
68 Accounts, who shall investigate pursuant to subsection (a) of this
69 section. If the evidence obtained by the Attorney General or the
70 Auditors of Public Accounts demonstrates ongoing or additional
71 retaliatory action against such employee, the Attorney General may
72 intervene in any proceeding pursuant to subdivision (3) of this
73 subsection to request that the Retaliation Adjudication Board referee
74 immediately issue interim or temporary orders to prevent such
75 ongoing or additional retaliation, or to issue orders of such other
76 equitable relief as the Retaliation Adjudication Board referee deems
77 appropriate.

78 (3) (A) Not later than [thirty] ninety days after learning of the
79 specific incident giving rise to a claim that a personnel action has been
80 threatened or has occurred in violation of subdivision (1) of this
81 subsection, a state or quasi-public agency employee, an employee of a
82 large state contractor or the employee's attorney may file a complaint
83 against the state agency, the quasi-public agency, or the large state

84 contractor concerning such personnel action with the [Chief Human
85 Rights Referee designated under section 46a-57] Retaliation
86 Adjudication Board established pursuant to section 1 of this act. The
87 state agency shall be represented by the Office of Labor Relations. Such
88 complaint may be amended if an additional incident giving rise to a
89 claim under this subdivision occurs subsequent to the filing of the
90 original complaint. The [Chief Human Rights Referee] Retaliation
91 Adjudication Board shall assign the complaint to a human rights
92 referee appointed under section 46a-57 or such other referee appointed
93 by the Governor pursuant to section 1 of this act, who shall conduct a
94 hearing and issue a decision concerning whether the officer or
95 employee taking or threatening to take the personnel action violated
96 any provision of this section. If, during the pendency of the hearing,
97 the Retaliation Adjudication Board referee has reasonable cause to
98 believe that any officer or employee has taken personnel action in
99 violation of subdivision (1) of this subsection, such referee may order
100 temporary equitable relief, including, but not limited to, an order
101 reinstating the person filing the complaint to the same position held
102 before such personnel action was taken. If, after the hearing, the
103 [human rights] Retaliation Adjudication Board referee finds [such] a
104 violation, the referee may award the aggrieved employee
105 reinstatement to the employee's former position, back pay and
106 reestablishment of any employee benefits for which the employee
107 would otherwise have been eligible if such violation had not occurred,
108 reasonable attorneys' fees, and any other damages, provided the
109 referee may award double damages if the referee finds that such
110 violation was egregious or conducted with malice. The Retaliation
111 Adjudication Board referee shall forward the decision finding such
112 violation and award to the head of the agency and the supervisor of
113 the employee or officer who violated subdivision (1) of this subsection
114 who shall take appropriate personnel action. For the purposes of this
115 subsection, such human rights referee shall act as an independent
116 hearing officer. The decision of a human rights referee under this
117 subsection may be appealed by any person who was a party at such

118 hearing, in accordance with the provisions of section 4-183.

119 (B) The Chief Human Rights Referee, in consultation with the
120 Retaliation Adjudication Board, shall adopt regulations, in accordance
121 with the provisions of chapter 54, establishing the procedure for filing
122 complaints and noticing and conducting hearings under subparagraph
123 (A) of this subdivision.

124 (4) As an alternative to the provisions of subdivisions (2) and (3) of
125 this subsection: (A) A state or quasi-public agency employee who
126 alleges that a personnel action has been threatened or taken may file an
127 appeal not later than [thirty] ninety days after learning of the specific
128 incident giving rise to such claim with the Employees' Review Board
129 under section 5-202, or, in the case of a state or quasi-public agency
130 employee covered by a collective bargaining contract, in accordance
131 with the procedure provided by such contract; or (B) an employee of a
132 large state contractor alleging that such action has been threatened or
133 taken may, after exhausting all available administrative remedies,
134 bring a civil action in accordance with the provisions of subsection (c)
135 of section 31-51m.

136 (5) In any proceeding under subdivision (2), (3) or (4) of this
137 subsection concerning a personnel action taken or threatened against
138 any state or quasi-public agency employee or any employee of a large
139 state contractor, which personnel action occurs not later than [one
140 year] three years after the employee first transmits or discloses facts
141 and information concerning a matter under subsection (a) of this
142 section or subdivision (1) of this subsection to the Auditors of Public
143 Accounts, [or] the Attorney General or an employee of the state
144 agency, quasi-public agency or large state contractor, as applicable,
145 there shall be a rebuttable presumption that the personnel action is in
146 retaliation for the action taken by the employee under subsection (a) of
147 this section or subdivision (1) of this subsection.

148 (6) If a state officer or employee, as defined in section 4-141, a quasi-
149 public agency officer or employee, an officer or employee of a large

150 state contractor or an appointing authority takes or threatens to take
151 any action to impede, fail to renew or cancel a contract between a state
152 agency and a large state contractor, or between a large state contractor
153 and its subcontractor, in retaliation for the disclosure of information
154 pursuant to subsection (a) of this section or subdivision (1) of this
155 subsection to any agency listed in subdivision (1) of this subsection,
156 such affected agency, contractor or subcontractor may, not later than
157 ninety days after learning of such action, threat or failure to renew,
158 bring a civil action in the superior court for the judicial district of
159 Hartford to recover damages, attorney's fees and costs.

160 (c) Any employee of a state or quasi-public agency or large state
161 contractor, who is found to have knowingly and maliciously made
162 false charges under subsection (a) of this section, shall be subject to
163 disciplinary action by such employee's appointing authority up to and
164 including dismissal. In the case of a state or quasi-public agency
165 employee, such action shall be subject to appeal to the Employees'
166 Review Board in accordance with section 5-202, or in the case of state
167 or quasi-public agency employees included in collective bargaining
168 contracts, the procedure provided by such contracts.

169 (d) On or before September first, annually, the Auditors of Public
170 Accounts shall submit to the clerk of each house of the General
171 Assembly a report indicating the number of matters for which facts
172 and information were transmitted to the auditors pursuant to this
173 section during the preceding state fiscal year and the disposition of
174 each such matter.

175 (e) Each contract between a state or quasi-public agency and a large
176 state contractor shall provide that, if an officer, employee or
177 appointing authority of a large state contractor takes or threatens to
178 take any personnel action against any employee of the contractor in
179 retaliation for such employee's disclosure of information [to any
180 employee of the contracting state or quasi-public agency or the
181 Auditors of Public Accounts or the Attorney General under the

182 provisions of] pursuant to subdivision (1) of subsection (b) of this
 183 section or subsection (a) of this section, the contractor shall be liable for
 184 a civil penalty of not more than five thousand dollars for each offense,
 185 up to a maximum of twenty per cent of the value of the contract. Each
 186 violation shall be a separate and distinct offense and in the case of a
 187 continuing violation each calendar day's continuance of the violation
 188 shall be deemed to be a separate and distinct offense. The executive
 189 head of the state or quasi-public agency may request the Attorney
 190 General to bring a civil action in the superior court for the judicial
 191 district of Hartford to seek imposition and recovery of such civil
 192 penalty.

193 (f) Each large state contractor shall post a notice of the provisions of
 194 this section relating to large state contractors in a conspicuous place
 195 which is readily available for viewing by the employees of the
 196 contractor.

197 (g) No person who, in good faith, discloses information [to the
 198 Auditors of Public Accounts or the Attorney General] in accordance
 199 with the provisions of this section shall be liable for any civil damages
 200 resulting from such good faith disclosure.

201 (h) As used in this section:

202 (1) "Large state contract" means a contract between an entity and a
 203 state or quasi-public agency, having a value of five million dollars or
 204 more; and

205 (2) "Large state contractor" means an entity that has entered into a
 206 large state contract with a state or quasi-public agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	4-61dd

Statement of Purpose:

To provide additional protection for individuals who provided information regarding waste or fraud against the state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]